

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 1802 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.JAIN

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? No

J

3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge?
-No

K.V.SHAH

Versus

STATE OF GUJARAT

Appearance:

MR DG CHAUHAN for Petitioners
MR SR DIVETIA, APP., for Respondent No. 1
SERVED for Respondent No. 2
MR MUKUND M DESAI for Respondent No. 3

CORAM : MR.JUSTICE R.R.JAIN

Date of decision: 23/10/96

ORAL JUDGEMENT

The matter was notified on 18.10.1996 at 2.45 P.M. On that day neither Mr. Chauhan nor the respondents No.2 and 3 remained present. However, in the interest of justice, the matter was adjourned for today. Today when the matter is called out, Mr. Chauhan, learned advocate

for the petitioners, is present whereas Mr. Desai, learned advocate for the respondent No.3/original complainant, is not present. Mr. Divetia, learned A.P.P. for respondent No.1- State of Gujarat, is also present.

The petitioners No.1 and 2 are officers of the Gujarat State Financial Corporation ("Corporation" for short hereinafter) and at the relevant time were working as Manager and Senior Inspector respectively and were discharging duties as conferred upon them by the State Financial Corporations Act, 1951 ("Act" for short hereinafter). It appears that while discharging their duties under Section 29 of the Act, the petitioners took possession of immovable properties owned and hypothecated/mortgaged by respondent No.3 to the Corporation. From the record it transpires that while exercising powers conferred under Section 29 of the Act, they took possession of immovable properties and also sealed a part of the immovable properties as well as posted security guards in protection of the property. It cannot be gainsaid that while exercising the powers under the Act, the petitioners have unfettered rights and powers over the immovable properties which have been mortgaged and have right to take possession thereof. The possession cannot be taken except entering in the same. In the instant case also the petitioners entered in the factory premises situated at Ankleshwar GIDC and took possession thereof. Aggrieved by the Act of the petitioners, the respondent No.3, original complainant, filed complaint under Sections 447, 147, 148, 149 and 341 of the Indian Penal Code in the court of the learned Judicial Magistrate, First Class, Ankleshwar on 26.12.1989. The learned Magistrate, instead of issuing process, forwarded the complaint under Section 156 (3) of the Criminal Procedure Code ("Code" for short hereinafter) to the concerned police station for investigation. It is at this juncture that the petitioners/original accused have approached this court under Section 482 of the Code for quashing the proceedings.

As a cardinal rule, powers under Section 482 of the Code can be exercised to prevent abuse of process of Courts or to secure the ends of justice. The complaint in question is filed under Section 447 of the IPC alleging criminal trespass and wrongful restraint. It is true that the petitioners/original accused entered in the factory premises in question without permission of the respondent No.3. However, the said act was preceded by a series of correspondence between the parties owing to default of

under Section 29 of the Act and hence their entry in the property of respondent No.3 cannot be said to be illegal. Therefore, question of committing offence of criminal trespass does not arise.

Similarly, the Corporation through its officers is also empowered to take possession as well as take over management and can also transfer the said property by way of lease or sale. While doing so the management of the industrial concern which is liable to discharge obligations under the agreement has to be prevented from entering and divested of possession and if that is done the act cannot fall within the ambit of Section 341 of the Indian Penal Code. Therefore, question of committing offence under Section 341 of IPC also does not arise. In my view, overlooking the statutory powers of the petitioners, the respondent No.3 has filed the impugned complaint which is nothing else but an abuse of process of Court. On the face of it, the present petitioners while discharging their duties as officers of the Corporation have not committed any criminal act and, therefore, cannot be subjected to face criminal proceedings. In the background of the circumstances, it is evidently clear that no offence is alleged to have been committed by the petitioners. Consequently, no complaint is maintainable. Therefore, in my view, the complaint deserves to be quashed.

In the result, the application is allowed. The proceedings of Criminal Inquiry Case No. 115 of 1989 and the order dated 26.12.1989 passed by the learned Judicial Magistrate, First Class, Ankleshwar and initiated by respondent No.3 are hereby quashed and set aside. Rule is made absolute accordingly.